

REMARKS

Claims 48-64 and 73-76 are pending in this application. Applicants respectfully request reconsideration of this application.

Applicants acknowledge the courtesies extended by SPE McDermott to the undersigned counsel concerning this matter during telephone interviews on October 22, 2003 and November 13, 2003. The substance of those discussions is included below.

Initially, as discussed with SPE McDermott during the November 13<sup>th</sup> interview, Applicants request an opportunity for counsel to discuss this application with the Examiner, SPE McDermott and the responsible SPRE prior to issuance of a Notice of Allowance in the event that the pending claims are found to be allowable and the Examiner concludes that there are no grounds for declaring an interference with U.S. Patent No. 5,304,187 (Green), as discussed below. SPE McDermott indicated that she was agreeable to such a discussion.

Claim Rejections - 35 U.S.C. §112

Claims 48, 60-64 and 73-76 stand finally rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner contends that the claims are incomplete in that they fail to completely identify each element forming a loading and delivery apparatus. In particular, the Examiner asserts that the claims fail to positively recite a cartridge as disclosed in an embodiment described in the specification. Applicants respectfully disagree.

Applicants respectfully assert that the pending claims are definite in that they do particularly point out and distinctly claim the subject matter which Applicants regard as their invention. In this regard, one of ordinary skill in the art would readily understand the scope of the claims based on the description of a "loading and delivering apparatus" contained in the specification and the illustration of a "loading and delivering apparatus" provided in the drawings.

In the Office Action, the Examiner asserts that the claims are indefinite simply because they do not recite a "cartridge" as shown in the figures and described in the specification as being a feature of an embodiment of a loading and delivery apparatus. The Examiner's assertion is untenable and results in an attempt by the Examiner to improperly import limitations from the

specification into the claims under the guise that the claims are otherwise indefinite. However, the breadth of a claim is not to be equated with indefiniteness. MPEP 2173.04. As long as the scope of a claim is clear and an Applicant has not otherwise indicated an intention that the claim is to be of different scope, then the claim does particularly point out and distinctly claim the subject matter Applicant regards as the invention. In the present application, the claims clearly set forth the metes and bounds of the subject matter Applicants regard as the invention. The patent statute under 35 U.S.C. §112, second paragraph, requires no more.

The undersigned discussed the impropriety of the rejections with SPE McDermott during the telephone interviews. SPE McDermott agreed that the rejections under §112, second paragraph, were improper. Accordingly, the rejections of claims 48, 60-64 and 73-76 under 35 U.S.C. §112, second paragraph, should be withdrawn.

#### Interference

In the Office Action, the Examiner indicated that Interference No. 104,374 has been vacated on the basis that the claims of the present application and the claims of U.S. Patent No. 5,304,187 (Green) fail in meeting the requirements for establishment of an interference. As indicated previously, the undersigned contacted the Examiner on April 15, 2003 to discuss this issue after receipt of the prior non-final Office Action. At that time, the Examiner indicated that there was no interfering subject matter in view of the §112, second paragraph, rejections. However, as set forth above, these rejections are improper and should be withdrawn.

Without limiting Applicants' position, in any way whatsoever, it is again submitted that there appears to be interfering subject matter between claims 48, 59-62, 73 and 75-76 of the pending application and claims 25-30 of the Green patent. Applicants request consideration of the potential interference issues set forth in the Petition filed on May 25, 1994 in connection with application Serial No. 07/886,689 (parent application).

**CONCLUSION**

In view of the foregoing remarks, Applicants respectfully request reconsideration of the pending claims.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

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